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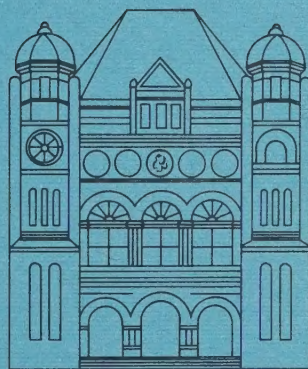
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Regulating the use of force
by Ontario police officers

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**REGULATING THE USE OF FORCE
BY ONTARIO POLICE OFFICERS**

Current Issue Paper 133



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REGULATING THE USE OF FORCE BY ONTARIO POLICE OFFICERS

Current Issue Paper 133

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TABLE OF CONTENTS

	<u>Page No.</u>
INTRODUCTION	1
OVERVIEW OF EXISTING LAW ON THE USE OF FORCE	2
CRIMINAL CODE	2
Current Provisions	2
Proposed Changes	5
ONTARIO'S POLICE SERVICES ACT	7
Introduction	7
Use of Force	8
Current Provisions	8
Proposed Changes	9
Reports on the Use of Force	10
Current Provisions	10
Proposed Changes	11
Alternatives to Lethal Force	12
Current Provisions	12
Proposed Changes	13
Use of Force Training	14
Current Provisions	14
Proposed Changes	15
INTERNAL DIRECTIVES OF POLICE DEPARTMENTS	16
REACTION TO PROPOSED CHANGES	17
Police Reaction	17
Response of the Clare Lewis Task Force	19
CONCLUSIONS	22
FOOTNOTES	24
APPENDIX A	Section 25 of the <i>Criminal Code of Canada</i>
APPENDIX B	Regulation 790 made under the <i>Police Services Act</i>
APPENDIX C	Proposed Amendments to Regulation 790

INTRODUCTION

A number of recent police shootings in Ontario and in other parts of Canada have been the focus of increased public concern and media interest. In the past four years, Metropolitan Toronto police officers have shot eight black youths, four of them fatally. In at least two cases the victims were sitting unarmed in automobiles. Last August, an out of control schizophrenic wielding a baseball bat was shot to death by a Toronto police officer. In September of this year a Caledon OPP officer shot a man in the head after pulling his pick-up truck over to the side of a highway. The circumstances of this shooting remain unclear amidst charges that the OPP officer has refused to co-operate with the Ontario Solicitor General's Special Investigations Unit.

While these incidents have raised questions about the relationship between police officers and visible minority groups, particularly in the Metropolitan Toronto area, this paper will focus on the debate over what legal constraints should be placed on the use of lethal force by police officers.

Currently, the use of lethal force is regulated at the federal level by the *Criminal Code*, and at the provincial level in Ontario by regulations made under the *Police Services Act*. Proposals to amend both pieces of legislation have recently been announced. The Ontario proposals reflect, to a large extent, recommendations made in the 1980 report of the Task Force on the Use of Force by Police Officers, chaired by the late Honourable Judge John Greenwood (the Greenwood Commission),¹ and recommendations contained in the 1989 report of the Race Relations and Policing Task Force, chaired by Clare Lewis (the Clare Lewis Task Force).²

This paper will outline the existing statutory provisions governing the use of lethal force by police officers in Ontario, as well as some of the criticisms levelled at this legislation. Proposed changes are discussed in light of the recommendations made in the reports of the Greenwood Commission and the Clare Lewis Task Force, and the reactions of interested parties to the proposed changes are noted.

OVERVIEW OF EXISTING LAW ON THE USE OF FORCE

Use of lethal force by police officers in Ontario is regulated by two pieces of legislation: the federal *Criminal Code*, and Ontario's *Police Services Act* and its regulations. In addition, individual police departments have established their own internal directives regarding the use of force.

Although the provincial legislation and the departmental directives impose stricter rules on the use of lethal force than those imposed by the *Code*, a police officer will only be subject to criminal sanctions if he or she violates the provisions of the *Code*. A violation of the *Police Services Act* or departmental directives can result only in administrative penalties. Set out in the following sections is a description of the existing legal standards applicable to the use of lethal force by police and recently announced proposals for change.

CRIMINAL CODE

Current Provisions

Section 25 of the *Code* (reproduced in full in Appendix A) establishes a general protection from liability for persons administering and enforcing the law. Subsection 25(1) allows persons, including private citizens and police officers, to use as much force as is reasonably necessary to enforce the law.

Subsection 25(3) then limits the right to use lethal force to situations where a police officer or private citizen reasonably believes such force is necessary to protect him- or herself, or any one under his or her protection, from death or grievous bodily harm.

Subsection 25(4) extends the right of a police officer, and everyone lawfully assisting a police officer, to use lethal force to prevent the escape of a person the police officer is attempting to arrest. Specifically, lethal force may be used against an escaping suspect if the following circumstances exist:

- the suspect is alleged to have committed a crime for which he or she may be arrested without a warrant;
- the suspect has taken flight; and
- the suspect's escape cannot be prevented by reasonable means in a less violent manner.

Section 495 of the *Code* sets out the circumstances in which a police officer may arrest a suspect without a warrant. For less serious crimes (summary conviction offenses), section 495 provides that an officer may only arrest a person without a warrant at the time the offence is actually being committed. However, an officer may arrest a person without a warrant at any time in connection with more serious crimes (indictable offenses) where the person has committed an indictable offence or the officer reasonably believes the person has committed or is about to commit an indictable offence. In addition, section 495 provides that an arrest may be made without a warrant only where the arresting officer believes it is in the public interest, having regard to all the circumstances. In this respect, officers must take such factors into account as the need to establish the identity of a suspect and the need to prevent the repetition or continuation of an offence.

Also related to the right to use lethal force is section 27 of the *Code*. Subsection 27(a) authorizes any person to use as much force as is reasonably necessary to prevent the commission of an offence for which a suspect could be arrested without a warrant. The person seeking to justify the use of force to prevent the commission of the offence must establish that, if the crime had been committed, it would have been likely to have caused immediate and serious injury to the person or the property of anyone.

Finally, section 26 provides that anyone authorized to use force under sections 25 or 27 will be criminally liable for any use of force in excess of that authorized by law.

The *Criminal Code* provisions outlined above have been the subject of much debate in recent years. In the view of many commentators, the basis for the so called "fleeing

felon" rule in subsection 25(4) no longer exists.³ Subsection 25(4), it is pointed out, reflects the old English common law rule which entitled anyone to use as much force as necessary to prevent the escape of a fleeing felon, although one could not use lethal force to prevent the escape of someone suspected of committing a misdemeanour. At the time the common law rule was developed, all felonies were punishable by death. Thus, it was considered reasonable to permit private citizens who exposed themselves to potential harm while attempting to apprehend a felon to use as much force as was deemed necessary.

However, over the years, legislation in Canada (and in other common law countries) has added many crimes to the felony (indictable offenses) category which are neither dangerous nor violent. For example, under the *Criminal Code*, forgery (s. 367), bribery (ss. 119, 120, 121, 123, 128) and personating an officer (s. 130) are indictable offenses. Critics of the fleeing felon rule point out that a strict reading of subsection 25(4) of the *Code* would allow a police officer to use as much force as the officer deemed necessary to prevent the escape of someone suspected of committing a non-violent crime, and who poses no immediate danger to either the arresting police officer or members of the public.

Moreover, critics note that *Criminal Code* offenses connected with fleeing arrest, such as resisting or obstructing a police officer (s. 129) and escape from lawful custody (s. 145) are punishable by a maximum of two years imprisonment. Therefore, it is argued, to permit the use of lethal force against a fleeing felon is inconsistent with the actual penalties imposed under the *Code* for offenses related to resisting arrest.

In the words of one commentator:

the authorization given to police officers which allows for the use of deadly force against fleeing suspects seems quite out of line with the values of a society which would not penalize these suspects very severely if they were apprehended, tried and convicted.⁴

The Clare Lewis Task Force was critical of the broad discretion conferred on police officers by subsection 25(4). The Task Force found that even police forces in Ontario are uncomfortable with subsection 25(4) due to the lack of any guidelines on the exercise of this broad discretion. Indeed, submissions to the Task Force pointed out that instructors at the Ontario Police College no longer advise officers to rely on the authority conferred under subsection 25(4).⁵

The Greenwood Commission concluded that subsection 25(4) "confers excessive discretion in the use of firearms on individual police officers amounting substantially to abandonment of responsibility in this area."⁶

In the view of those who have been critical of the fleeing felon rule, subsection 25(4) of the *Criminal Code* should be rewritten to emphasize the perceived immediate danger facing an arresting officer or members of the public if a suspect were allowed to escape. The Clare Lewis Task Force, for example, made the following recommendation:

that the Government of Ontario petition the Government of Canada to amend section 25(4) of the *Criminal Code* to restrict its applicability to situations in which the fleeing offender poses an immediate threat of death to police officers or others.⁷

Proposed Changes

On August 27, 1992, the federal Minister of Justice released a discussion paper containing proposals for changes to the *Criminal Code*.⁸ These proposals are intended to clarify the circumstances in which police officers are permitted to use firearms against an escaping suspect. One proposal offered for discussion is that subsection 25(4) of the *Code* be amended as follows:

25(4). A peace officer who is proceeding lawfully to arrest, with or without a warrant, any person for an offence for which that person may be arrested without

warrant, and everyone lawfully assisting the peace officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight including, where the peace officer or any one lawfully assisting the peace officer believes on reasonable grounds that it is necessary for the purpose of protecting the peace officer, the person lawfully assisting or any other person from imminent or future death or grievous bodily harm, force that is intended or is likely to cause death or grievous bodily harm unless the escape can be prevented by reasonable means in a less violent manner.

The effect of such an amendment would be to limit the authority of police officers to use deadly force against a fleeing suspect to circumstances where the officer reasonably believes that a suspect poses a threat of serious harm or death to the police officer or a member of the public if the suspect escapes, and no other reasonable, less violent alternative exists to prevent escape. This amendment would apply where a fleeing suspect poses either an immediate threat to the arresting officer or a future threat to the public if the suspect were allowed to escape.

Also, under such an amendment, the question of whether a police officer was justified in using lethal force in a particular case would be determined in a court of law on a subjective, not an objective basis; that is, according to how the officer perceived the situation, rather than how an average person would have reacted.

Ontario's Ministry of the Solicitor General has declared its general support for changes to the *Criminal Code* which would allow the use of lethal force against a fleeing felon only where there is a risk to life.⁹ However, the Ontario government has not commented on any specific suggestions for change, such as the one in the federal government's announcement of August 27, 1992, noted above.

ONTARIO'S POLICE SERVICES ACT

Introduction

Several provinces, including Ontario, have responded to the existing use of force provisions of the *Criminal Code* by passing legislation that further restricts the use of firearms by police officers. However, since the federal government has exclusive jurisdiction in the area of criminal law, the provinces can only impose administrative penalties, such as suspensions, loss of pay and dismissal, on police officers who violate provincial statutes. Criminal charges can only be brought against a police officer for violations of the *Criminal Code*.

In Ontario, the use of firearms by municipal and provincial police officers is governed by Regulation 790, made under the *Police Services Act*. (A copy of Regulation 790 is contained in Appendix B.) On June 16, 1992, the Ministry of the Solicitor General released for discussion proposed amendments to Regulation 790.¹⁰ Public comment on these proposals was received by the Ministry, including the views of the Committee on Public and Officer Safety, appointed by the Solicitor General following the release of the June discussion paper. The Committee consisted of both police and community representatives. On September 4, 1992, the Ministry announced formal amendments to Regulation 790 (contained in Appendix C).¹¹ These amendments, according to the Ministry, reflect public comment on the June discussion paper, as well as the key recommendations of the 1989 Clare Lewis Task Force report. Some amendments took effect on September 4, 1992, others will take effect either on January 1, 1993 or June 1, 1994.

This section of the paper looks at the existing provisions of the *Police Services Act* governing the use of force, reporting requirements, and alternatives to lethal force and use of force training. Recent changes in each area are discussed and reactions to these changes are noted in the final section of the paper.

Use of Force

Current Provisions

Section 8 of Regulation 790 provides that no police officer may draw his or her revolver except to defend life, or to apprehend or detain a person who may cause death or grievous bodily harm. Section 9 of Regulation 790 prohibits a police officer from discharging a firearm except to defend life or to apprehend, when other means are insufficient, a person who may cause death or grievous bodily harm.

The key difference between the use of force provisions in Regulation 790 and those in the *Criminal Code* is that, under Regulation 790, a police officer is permitted to use a firearm to prevent a suspect from escaping only if the suspect might cause death or grievous bodily harm if allowed to escape, whereas subsection 25(4) of the Code permits the use of lethal force to prevent escape, even if the suspect poses no threat to life or threat of bodily harm.

Regulation 790 further restricts the use of firearms by prohibiting police officers from drawing or displaying their revolvers, or using a firearm to threaten a person, except where it is necessary to perform their duty.¹²

Finally, section 9 of the Regulation permits the discharge of a firearm "for the purposes of giving an alarm." Although the practice of firing warning shots by Ontario police officers is now rare, they are still permitted under the wording of section 9.

The effect of provincial regulations such as Regulation 790 has been questioned. One view holds that such regulations actually have a greater effect on the practices of police forces since any shooting incident will lead to an investigation by the police department concerned; whereas the *Criminal Code* provisions have relatively little effect due to the fact that few criminal prosecutions for use of excessive force are ever brought against police officers in Canada.¹³

On the other hand, the Clare Lewis Task Force argued that since provincial regulations such as Regulation 790 do not set criminal legal standards for the use of force, police departments will be less inclined to enforce fully the standards imposed under provincial regulation. This reluctance to enforce provincial standards will, in turn, lower public confidence in such laws. In the view of the Task Force, it is the *Criminal Code* that has the greatest bearing on police conduct, and it is this legislation which must reflect society's values with respect to the use of force.

Proposed Changes

In an attempt to establish clearer authority for the use of force by police officers, the government amended section 8 of Regulation 790 to read as follows:

8. A member of a police force shall not draw a handgun or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.

Under this amendment, the existing section 8 (drawing a revolver) and section 9 (discharging a firearm) are combined to establish a single test for the use of lethal force, based on the reasonable belief of a police officer that such force is necessary to defend life or prevent serious bodily harm.

The amendment allows an officer to use lethal force where there is an immediate or future threat of loss of life or serious bodily harm. However, in requiring that the use of lethal force be "necessary," an officer must still determine that the apprehension of a suspect could not have been accomplished through less violent means.

Under the new section 9 to Regulation 790, police officers will be permitted to discharge a firearm to call for assistance in a "critical situation" where there is no reasonable alternative, and to destroy animals which are potentially dangerous or for

humane reasons. The new section 9, however, abolishes the practice of firing warning shots because of the danger of stray bullets.

The amendments to sections 8 and 9 took effect on September 4, 1992.

Reports on the Use of Force

Current Provisions

Regulation 790, made under the *Police Services Act*, sets out reporting procedures that must be followed whenever a police officer discharges a firearm. Where an officer unintentionally or intentionally discharges his or her firearm, the Chief of Police (if the officer belongs to a municipal police force), or the OPP Commissioner (if the officer is an OPP officer), is required immediately to conduct an investigation of the incident.¹⁴ Although this provision does not guarantee that the Chief of Police or Commissioner will be informed of all firearm discharges, police officers are subject to a general obligation to report any matter that it is their duty to report.¹⁵

Regulation 790 also requires that, where a police officer kills or injures another person through the use of a firearm, the OPP Commissioner or Chief of Police must immediately conduct an investigation of the incident, and the Commissioner must submit a report to the Ontario Civilian Commission on Police Services, and a Chief must submit a report to the local police services board. The Commission or board must review the reports and consider the necessity of further inquiries. A police services board must file a copy of a Chief's report with the Commission. Finally, the Commission is obligated to inform the Solicitor General of the contents of any reports filed under the above provisions, and must provide a copy of such reports upon request.¹⁶

In its review of existing use of force reporting requirements, the Clare Lewis Task Force found that the Ontario Civilian Commission on Police Services and police services boards review incidents separately to check that each case was thoroughly

investigated. However, cases are not compared with a view to determining trends in the use of force.

It was also pointed out by the Task Force that individual police departments have additional reporting requirements for the use of other types of force (i.e., non-lethal), but that these requirements lack consistency. Moreover, it was apparent to the Task Force that police officers had differing interpretations of these additional requirements. For example, some officers believed they were only required to file reports if requested by a senior officer. Other officers were confused about whether they were required to report incidents which resulted in death or serious injury, or only those incidents involving excessive force.

One effect of the existing reporting system in Ontario, the Task Force concluded, is a lack of meaningful statistical information about the use of force by the police. Accordingly, the Task Force recommended that uniform reporting standards be established across the province. Such standards could be established, it was suggested, by an amendment to Regulation 790 requiring police officers to report the use of any type of force.

In addition, the Task Force recommended that the Policing Services Division of the Ministry of the Solicitor General become a central depository for use of force reports, so that such reports can be analyzed for significant trends.¹⁷

Proposed Changes

The amendments to Regulation 790 (see Appendix C) announced by the Ministry of the Solicitor General on September 4, 1992 include a controversial amendment to the existing reporting requirements with respect to the use of force. As noted above, a police officer is currently required to file a report each time he or she discharges a firearm. These reports are used by the Chief of Police or OPP Commissioner in the conduct of an investigation. Regulation 790 does not require police officers to file a report when they draw their revolvers or use less than lethal force.

Proposed amendments to Regulation 790 would require police officers to file a report with the Chief of Police or OPP Commissioner whenever an officer:

- draws a handgun in the presence of a member of the public;
- discharges a firearm;
- uses a weapon, other than a firearm, on another person; or
- uses physical force on another person that causes an injury requiring medical attention.¹⁸

Reports filed under the above requirements must include a statement of the facts surrounding the incident.

The rationale behind the proposed reporting provisions is to give local police departments an additional source of management information. Each police department would be required, under the new regulations, to review information collected on the use of force to determine whether the department needs to change its policies on the use of force, or provide further training to members of the department. This information would also be available to the Ministry of the Solicitor General upon request.

The new reporting requirements will take effect on January 1, 1993.

Alternatives to Lethal Force

Current Provisions

According to the Ministry of the Solicitor General, police officers in Ontario currently employ the following less than lethal force methods:

- verbal communication;
- bare handed intervention;

- batons;
- carotid restraint; and
- special less than lethal weapons for tactical units.

In addition, section 12 of Regulation 790 currently permits the use of tear gas, but prohibits the use of any other gas or chemical weapons.

Proposed Changes

Under the proposed amendments to Regulation 790, police officers would be permitted to use *oleoresin capsicum*, commonly known as pepper spray, as a less than lethal force option.¹⁹ Any officer carrying the spray must receive special training in its use. The stated policy for this amendment is to provide police officers with a method of defusing a potentially violent situation which might otherwise result in the use of lethal force.

The new regulations would, however, also recognize that the use of so-called "intermediate" weapons, such as pepper spray, could lead to abuses. Therefore, under the new regulations the introduction of any new classes of non-lethal weapons would be subject to the approval of the Ministry of the Solicitor General. Further, the Ministry would be responsible for issuing technical standards and usage guidelines for such weapons.²⁰

Finally, the Ministry announced that it is prohibiting the use of the carotid restraint, or "choke hold," by police officers.

The amendments concerning alternatives to lethal force take effect on June 1, 1994.

Use of Force Training

Current Provisions

At present, the only use of force training provisions contained in Regulation 790 are those set out in section 4. Section 4 reads:

4. Before a firearm is issued to a member of a police force, the Commissioner or Chief of Police, as the case may be, shall satisfy himself that the member has received instruction and is competent in its use, and where there is no chief of police, the board or committee or council, as the case may be, shall so satisfy itself.

However, there is currently no legal requirement that recruits attend the Ontario Police College before they are sworn in as constables, and there is no requirement that they pass the College's firearms training course before they are issued a firearm. In other words, as pointed out by the Greenwood Commission and the Clare Lewis Task Force, there is currently no provincial standard with respect to use of force training for recruits, or with respect to re-qualification training for police constables.

Recruits at the Ontario Police College now receive a total of 18 hours of firearm training on the principles of care and use of a firearm.²¹ In the view of the Ministry of the Solicitor General, the existing firearm training programs are only sufficient to "familiarize" new officers with their firearms, and do not guarantee competence in their use.²²

Both the Greenwood Commission and the Clare Lewis Task Force recommended that attendance at the Ontario Police College be compulsory, and that recruits should not be issued firearms unless they have passed the College's firearms training course.²³

Of even greater concern to the Greenwood Commission and the Clare Lewis Task Force was the inadequacy of existing in-service training. Continued training, it was observed, is currently left to the discretion of individual police departments. Due to

more funds and better facilities, larger departments have relatively superior in-service training programs than smaller forces. It was also found that there were significant discrepancies in quality between the programs provided even by the larger police forces.

Both the Greenwood Commission and the Clare Lewis Task Force concluded there was a need for enhanced in-service training in the use of lethal force, and that such training should be provided in accordance with provincial standards. In particular, it was recommended that police officers be required to re-qualify annually, at the Ontario Police College, in the use of firearms.²⁴

The Task Force went further in stressing the need to maintain a police officer's skills in the use of non-lethal force, noting that the deterioration of these skills could result in an officer becoming too dependent on the use of lethal force. Therefore, the Task Force recommended that police officers be required to re-qualify annually in physical fitness, and biennially in the use of holds and batons.²⁵

In addition, the Task Force recommended that training programs for police officers be strengthened through increased training in tactics, marksmanship, computerized simulations, the exercise of discretion to shoot, and use of force legislation.

Proposed Changes

Following the recommendations of the Greenwood Commission and the Clare Lewis Task Force, the amendments to Regulation 790 announced by the Ministry of the Solicitor General on September 4, 1992 would require every member of a police force (including recruits and constables), within the previous 12 months, to have successfully completed a prescribed training course on the use of firearms before being issued a firearm.²⁶

Further, police officers would be prohibited from using any type of force on another person, unless an officer has successfully completed a training course on the use of force.²⁷

Every police force will be responsible for ensuring that its officers receive the use of force and use of firearms training, and will have to keep written records of the training received by its officers.²⁸

Use of force and use of firearm training courses will be based on the following principles: legal requirements; the exercise of judgement; safety; theories on the use of force; and practical proficiency. Details of the proposed training programs will be set out in a set of curriculum guidelines established by the Ministry.

Amendments to the use of force training provisions take effect June 1, 1994.

INTERNAL DIRECTIVES OF POLICE DEPARTMENTS

A number of municipal police departments in Ontario have developed internal directives setting out departmental policies for the use of force by their members. As with the regulations to the *Police Services Act*, these directives carry administrative penalties for those members who violate departmental standards, but do not affect in any way the criminal liability of police officers under the *Criminal Code*.

Generally speaking, the internal directives of municipal police forces create stricter use of force standards than those contained in the *Criminal Code* and the *Police Services Act* regulations. However, access to these internal directives is limited, as they are considered confidential documents.

While the existence of internal directives has been welcomed by those who support stricter controls on the use of force by police officers, it has been suggested that internal directives are not effective in establishing public accountability on the part of police officers, since these directives affect only the internal disciplinary proceedings

of individual police departments. Moreover, it is argued by some that the creation of a third layer of standards for the use of force, in addition to the *Criminal Code* and *Police Services Act* regulations, only serves to confuse police officers.²⁹

REACTION TO PROPOSED CHANGES

Police Reaction

Generally speaking, police associations have been critical of the proposed changes to the *Criminal Code* and the *Police Services Act* regulations. Some associations have taken the position that any attempt to further limit existing use of force provisions is unacceptable. For example, the Executive Vice President of the Canadian Police Association has stated that "any move that would restrict an already restricted police force with regard to the use of force can be quite harmful to the members."³⁰ The federal Solicitor General recently stated that the *Criminal Code* should not be amended "in any way which would cause police officers to become apprehensive and compromise the safety of themselves or the public."³¹

Opponents of the proposed changes to the *Police Services Act* regulations have focused on the amendment that would require police officers to file a report whenever an officer draws his or her firearm in the presence of a member of the public. The main argument made by these critics is that the prospect of having to file a report will cause police officers to hesitate in drawing their guns in critical situations, thus putting officers and members of the public at greater risk. The President of the Metropolitan Toronto Police Association, for example, believes the proposed reporting requirements will cause officers to "have serious thoughts about unholstering weapons" in circumstances requiring a split second decision.³² In the opinion of the President of the Police Association of Ontario, the new provision will "completely demoralize police officers."³³

Chief James Harding of the Halton Regional Police force, and member of the Clare Lewis Task Force, dismisses the criticisms of the proposed reporting requirements as

"ludicrous."³⁴ Chief Harding and others³⁵ argue that an officer facing a life-threatening situation is not going to hesitate to take whatever measures he or she considers necessary simply because the officer would be required to file a report. Moreover, several police departments, including Halton Regional Police, already require such reports. In the view of Chief Harding, the proposed reporting requirements will provide police administrators with a better idea of what is going on in a community:

If an officer draws his weapon as he enters a building at night, as the Chief of Police, I want to know exactly why he did it I think the accountability factor in these situations far over-rides any perception that filing a report on it might be unnecessary.³⁶

The Ministry of the Solicitor General has responded to the concerns of police associations by pointing out that officers are rarely faced with a situation requiring them to draw their guns, and so the prospect of having to file a report in those rare instances should not cause officers to hesitate before drawing their weapons.

Some members of the police community suggest that the proposed amendments to the *Police Services Act* regulations are aimed at a perceived race relations problem in the Metropolitan Toronto area, and simply reflect the provincial government's pandering to anti-police citizen groups.³⁷ According to these critics, police forces across the province will be subjected to greater risk as a result of a few incidents in Metropolitan Toronto.

Another criticism made by police associations is that the proposed amendments to the *Police Services Act* regulations focus too much on restricting police officers, rather than providing better training.³⁸ The former President of the Police Association of Ontario predicted that "a member of the public is going to be killed or injured" due to the inadequate training police officers receive in some departments.³⁹ On the other hand, it has been suggested that the Association's opposition to the proposed reporting

requirements is inconsistent with its calls for better training, since the filing of use of force reports might identify those officers in need of more training.⁴⁰

On October 4, 1992, the Metropolitan Toronto Police Association voted to protest against the proposed amendments to Regulation 790. Under the protest plan, police officers will stop wearing badge numbers which identify officers, stop giving out summonses, stop wearing regulation caps, and start working to rule.

Response of the Clare Lewis Task Force

Following the acquittal last May of the Los Angeles police officers charged with using excessive force to arrest Rodney King, a black motorist, demonstrations were held in Toronto to protest the jury's decision. The demonstrations escalated into rioting and looting in downtown Toronto. Immediately after the riots, the Premier appointed Stephen Lewis as his Advisor on Race Relations, instructing him to make wide ranging recommendations for improving race relations in the province. The first recommendation in Mr. Lewis' report of June 9, 1992,⁴¹ was that the Clare Lewis Task Force be reconvened to assess the status of the recommendations made by the Task Force in its 1989 report.

The Task Force was reconvened last summer. In carrying out its new mandate, the Task Force reviewed the proposed amendments to the *Police Services Act* regulations announced in June 1992, and released an interim report on August 10, 1992, responding to these proposals.⁴² Since the amendments announced on September 4, 1992 were essentially unchanged from those released for discussion in June, 1992, the comments of the Task Force on the June amendments remain valid.

In its interim report, the Task Force recommended that the proposed amendment with respect to the use of lethal force should be more limited. As worded, the amendment to section 8 of Regulation 790 permits a police officer to draw or discharge a handgun "to protect against loss of life or serious bodily harm." The Task Force agreed that officers should only be authorized to draw or fire a handgun to protect life.

However, in the view of the Task Force, authorizing officers to draw and fire a handgun in order to prevent "serious bodily harm" creates "a distinction which [bears] little relevance in practice and which might be unduly permissive and lead to use of lethal force in less than appropriate circumstances."⁴³

Should the government choose to retain the words "or serious bodily harm" in section 8, the Task Force urged that the following recommendations in its 1989 report be immediately implemented: that more tactical training be provided for recruits at the Ontario Police College; that on-duty performance in the area of tactical manoeuvres be monitored and become a factor in performance appraisals; that firearm training for recruits at the Ontario Police College be improved through the use of computerized scenarios; and that the Ontario Police College be given funding to allow the College to provide realistic conditions for recruit firing practice. The Task Force also recommended that if the words "or serious bodily harm" were not deleted, the proposed new section 12.4 regarding training in the use of force be amended specifically to include tactics as one of the principles of training.⁴⁴ In this regard, the Task Force's interim report was critical of the Ministry of the Solicitor General's failure to provide adequate situational firearm and tactical training at the Ontario Police College.⁴⁵

Regarding use of force reporting, the Task Force expressed general support for the reporting proposals affecting use of lethal and non-lethal force. However, the Task Force was critical of the proposal to require police officers to report the use of physical force only if the use of such force "results in an injury requiring medical attention." It argued that these words should be deleted from the proposed new section 12.5(c) since they would exclude situations involving "the very real uses of physical force" which fall short of causing an injury requiring medical attention.⁴⁶ In the opinion of the Task Force, the reporting of the use of all degrees of physical force would assist police management in upgrading tactical training and in identifying those officers who might be abusing their authority to use force.

The Ministry's rationale for the proposed wording of section 12.5(c) is that it would be impractical to require police officers to report low levels of force, such as minor touching and handcuffing, which do not result in injury requiring medical attention. The Task Force responds that it is "obvious" that such incidental use of force should not be reportable.⁴⁷

In the event the Ministry decides reporting is not required whenever physical force is used by a police officer, the Task Force recommended that, as a minimum standard, reports should be required whenever physical force "causing injury" is used. In the view of the Task Force, the words "requiring medical attention" are subjective, and could act to exclude the reporting of injuries such as black eyes or bloody noses which do not require medical attention, but which could be relevant in determining liability or the need for training assessment.⁴⁸

The Task Force expressed its support for the proposed reporting requirements with respect to the use of firearms, citing the need for such information to determine training needs, assess trends in firearm use, and to identify officers in need of re-training. Responding to critics of the proposed firearm reporting requirements, the Task Force noted that:

no credible data or arguments suggest that such a requirement has placed an officer in danger or been an impediment to the proper use of a firearm. A properly trained officer will draw a handgun or discharge a firearm or use another weapon in appropriate circumstances. It is unrealistic to believe that a competently trained police officer will be deterred from drawing or discharging a firearm because of a reporting requirement. The circumstances, not the reporting requirement, will dictate the need and the conduct.⁴⁹

Finally, the Task Force expressed serious reservations about the proposal to allow police officers to use "pepper spray" as an alternative to the use of lethal force. The Task Force stated that it was not persuaded that "if aerosol weapons were permitted, care would be exercised to ensure that their use was appropriate, safe, humane and

preferable to existing alternatives."⁵⁰ Of particular concern to the Task Force is the fact that the potential deleterious effects of aerosol sprays are not fully understood. Any decision to authorize the use of such weapons, the Task Force recommended, should be preceded by a full study of the risks associated with their use.⁵¹

CONCLUSIONS

For many years now, use of force legislation at the federal level has been described by critics as outdated. The *Criminal Code* provisions relating to the use of lethal force, which establish the legal standards police officers in Canada must meet in order to avoid criminal liability, are considered by many to confer excessive discretionary authority on officers. Particularly troublesome to critics is the "fleeing felon" rule contained in subsection 25(4) of the *Code* which allows officers to use lethal force to apprehend persons suspected of committing crimes, even though the suspect might not pose an immediate threat to either the arresting officer or a member of the public, and even though the crime did not involve violence.

Recent federal proposals for amending the *Criminal Code* attempt to address these concerns. One proposal would permit the use of lethal force only in circumstances where a suspect poses a threat of death or serious harm to the arresting officer or a member of the public, and no reasonable less violent means to prevent escape exist. The Ontario government has stated its general support for amendments to the *Code* that would limit the authority of a police officer to use lethal force to situations involving a risk to life, although the province has not commented on the specific proposals put forward by the federal government.

Perceiving excessive discretion afforded police officers under the *Criminal Code*, several provinces, including Ontario, enacted legislation aimed at establishing stricter and clearer rules governing the use of force by municipal and provincial police officers. In response to a number of recent much debated incidents involving the use of lethal force by Ontario police officers, and in response to recommendations contained in the reports of the Greenwood Commission and the Clare Lewis Task

Force, the provincial government has introduced amendments to the *Police Services Act* regulations in an attempt to further clarify the rules governing the use of lethal force. These proposals would establish new reporting requirements with respect to the use of firearms, and would permit the use of aerosol weapons as an alternative to lethal force. In addition, provincial standards in use of force training would be established at the recruit and in-service levels.

Reaction to the provincial initiatives has generally been negative in the police community. The re-convened Clare Lewis Task Force has expressed general support for the new Ontario regulations, but feels that some are not strong enough.

FOOTNOTES

¹ Ontario, Task Force on the Use of Firearms by Police Officers (F. John Greenwood, Chair), *Report* (Toronto: The Task Force, 1980). Hereafter cited as "The Greenwood Commission."

² Ontario, Race Relations and Policing Task Force (Clare Lewis, Chair), *Report* (Toronto: The Task Force, 1989). Hereafter cited as "The Clare Lewis Task Force."

³ See: The Greenwood Commission, p. 6; The Clare Lewis Task Force Report, p. 130; Louise Savage and Trish Ault, *Police Officer and Public Safety — The Use of Lethal Force By and Against the Police* (Ottawa: Research Division, Ministry of the Solicitor General of Canada, 1984), p. 9; Canada, House of Commons, Canadian Committee on Corrections, *Report* (Ottawa: The Committee, 1969), p. 60.

⁴ Duncan Chappell and Linda P. Graham, *Police Use of Deadly Force: Canadian Perspectives* (Toronto: Research Report of the Centre of Criminology, University of Toronto, 1985), p. 44.

⁵ The Clare Lewis Task Force, p. 130.

⁶ The Greenwood Commission, p. 8.

⁷ The Clare Lewis Task Force, p. 131.

⁸ Canada, Department of Justice, "Justice Minister Issues Proposals on Criminal Code "Fleeing Felon" and Electronic Surveillance Provisions," *News Release*, 27 August 1992; and, Canada, Department of Justice, A Discussion Paper concerning the Deadly Use of Force (Fleeing Felon Rule) Presented at the Annual Meeting of the Canadian Association of Chiefs of Police, 27 August 1992.

⁹ Ontario, Ministry of the Solicitor General, New Regulations Announced on Public Use of Force, Code of Conduct, *News Release*, 4 September 1992; and Ontario, Ministry of the Solicitor General, *Background: The Use of Force and Code of Conduct for Ontario Police Officers, Amended Regulations Under the Police Services Act* (Toronto: The Ministry, 1992).

¹⁰ Ontario, Ministry of the Solicitor General, *Regulations to be Developed under the Police Services Act Use of Force/Code of Conduct: Annotated Regulations Position Paper* (Toronto: The Ministry, 16 June 1992).

¹¹ Ontario, Ministry of the Solicitor General, "New Regulations Announced"; and *Background: The Use of Force and Code of Conduct*.

¹² Regulation 790, ss. 6, 7.

¹³ Savage and Ault, *Police Officer and Public Safety*, p. 30.

¹⁴ Regulation 790, R.R.O. 1980, s. 10.

- ¹⁵ Regulation 791, R.R.O. 1980, Schedule: Code of Offenses, s. 1(c)(vi).
- ¹⁶ Regulation 790, s. 11.
- ¹⁷ The Clare Lewis Task Force, pp. 144-148.
- ¹⁸ Appendix C, *Proposed Amendments to Regulation 790*, s. 12.5.
- ¹⁹ Ibid., s. 12.1.
- ²⁰ Ibid., s. 12.
- ²¹ *Position Paper*, Ministry of the Solicitor General (Ontario), 16 June 1992.
- ²² Ibid.
- ²³ The Greenwood Commission, p. 32; The Clare Lewis Task Force, p. 132.
- ²⁴ The Greenwood Commission, p. 33; The Clare Lewis Task Force, p. 141.
- ²⁵ The Clare Lewis Task Force, p. 140.
- ²⁶ Appendix C, ss. 4 and 12.2(2).
- ²⁷ Ibid., s. 12.2(1).
- ²⁸ Ibid., s. 12.3.
- ²⁹ Chappell and Graham, *Police Use of Deadly Force*, pp. 79-80.
- ³⁰ "Ottawa pledges to curb police use of deadly force," *Globe and Mail*, 5 May 1992.
- ³¹ "Safety first," *Toronto Sun*, 11 August 1992.
- ³² "Police officers must file a report each time gun drawn, Pilkey says," *Toronto Star*, 17 June 1992.
- ³³ "Region Police already follow way of proposed rules," *Kitchener-Waterloo Record*, 17 June 1992.
- ³⁴ "Tighter control of police gun sought," *Globe and Mail*, 11 August 1992.
- ³⁵ "Limits on lethal force," *Globe and Mail*, 12 August 1992; "Police and guns," *Toronto Star*, 13 August 1992.
- ³⁶ "Gun reports OK by me: Harding," *Hamilton Spectator*, 18 June 1992.
- ³⁷ "Police group raps New Democrats for embracing province's 'cop bashers'," *Ottawa Citizen*, 12 August 1992.

³⁸ "Gun restrictions endanger police, officers believe," *Windsor Star*, 13 August 1992.

³⁹ "Missing the target," *Toronto Star*, 18 August 1991.

⁴⁰ Ibid.

⁴¹ Ontario, Sessional Paper No. 73, 2nd Session, 35th Parliament, tabled June 9, 1992.

⁴² The Task Force on Race Relations and Policing, *Interim Report: Response to Proposed Regulations under the Police Services Act, Use of Force/Code of Conduct, and the June 16, 1992 Annotated Regulations Position Paper of the Ministry of the Solicitor General*, 10 August 1992.

⁴³ Ibid., p. 2.

⁴⁴ Ibid., pp. 3-4.

⁴⁵ Ibid., p. 4.

⁴⁶ Ibid., p. 5.

⁴⁷ Ibid.

⁴⁸ Ibid., pp. 6-7.

⁴⁹ Ibid., p. 9.

⁵⁰ Ibid., pp. 12-13.

⁵¹ Ibid., p. 13.

APPENDIX A

Section 25 of the *Criminal Code of Canada*

PROTECTION OF PERSONS ACTING UNDER AUTHORITY / Idem / When not protected / When protected.

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,**
- (b) as a peace officer or public officer,**
- (c) in aid of a peace officer or public officer, or**
- (d) by virtue of his office,**

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(3) Subject to subsection (4), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless he believes on reasonable grounds that it is necessary for the purpose of preserving himself or any one under his protection from death or grievous bodily harm.

(4) A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and every one lawfully assisting the peace officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner.

APPENDIX B

Regulation 790 made under the *Police Services Act*

REGULATION 790

under the Police Act

EQUIPMENT

1. This Regulation applies to police forces established under the Act. R.R.O. 1980, Reg. 790, s. 1.

2. In this Regulation,

- (a) "board" means a board of commissioners of police;
- (b) "chief of police" includes an acting chief of police;
- (c) "committee of council" means a committee composed of the head or acting head of council and two other members thereof appointed by council;
- (d) "firearm" means a firearm as defined in section 82 of the *Criminal Code* (Canada). R.R.O. 1980, Reg. 790, s. 2.

FIREARM

3.—(1) Subject to subsections (3) and (4), where the Commissioner or chief of police carries a firearm or authorizes any member of a police force under his control or administration to carry a firearm, the firearm issued and carried shall be a .38 special calibre all-steel double action revolver, with a minimum barrel length of four inches, a safety hammer block and a swingout cylinder, and having a minimum weight of thirty ounces and a single action trigger pressure of not less than three and not more than five pounds, but the Commissioner or chief of police may authorize any policewoman on the force under his control or administration to carry a revolver of the same specifications except that the minimum weight shall be twenty-three ounces and the minimum barrel length shall be three inches.

(2) Subject to subsections (3) and (4), the ammunition supplied for and used in a firearm prescribed in subsection (1) shall be factory loaded and shall have a solid bullet of lead alloy of semi-wadcutter configuration with a muzzle velocity not exceeding 1,000 feet per second when fired in a revolver with a four-inch barrel.

(3) The Commissioner or chief of police or any other constable or police officer designated for the purpose by the Commissioner or chief of police, may authorize a member of a police force under his control to carry, for a special purpose, a firearm of a type other than that prescribed in subsection (1).

(4) Where on the 15th day of October, 1975 the members of a police force were carrying firearms of a type other than that prescribed by subsection (1), the Commission may, on such terms and conditions and for such period of time as it considers proper, authorize the continued carrying of such type of firearm. R.R.O. 1980, Reg. 790, s. 3.

4. Before a firearm is issued to a member of a police force, the Commissioner or chief of police, as the case may be, shall satisfy himself that the member has received instruction and is competent in its use, and where there is no chief of police, the board or committee of council, as the case may be, shall so satisfy itself. R.R.O. 1980, Reg. 790, s. 4.

5.—(1) A member of a police force shall carry his revolver in the holster issued to the member by the police force.

(2) The holster issued to a member of a police force shall be either,

(a) of a type that is covered by a full flap; or

(b) of a type that has been approved by the Commission for use by the members of the police force following an application by the board or, where there is no board, the committee of council.

(3) Subsection (2) does not apply to a holster that is worn concealed under clothing. O. Reg. 816/82, s. 1.

5a.—(1) No member of a police force shall alter or modify a firearm issued to the member, except as permitted under subsection (2).

(2) The Commissioner or chief of police or a member of the police force authorized by the Commissioner or chief of police may in writing permit an alteration or modification of a firearm issued to a member of the police force, except,

(a) an alteration or modification that would interfere with the safe and proper use of the firearm or of the holster in which it is carried; or

(b) the addition of a grip adapter, or of a trigger shoe or other device attached to the trigger. O. Reg. 364/84, s. 1.

6. No member of a police force shall draw or display his revolver, except when it is necessary to do so in the performance of his duty. R.R.O. 1980, Reg. 790, s. 6.

7. No member of a police force shall threaten or attempt to intimidate any person by means of a firearm, except when necessary in the performance of the member's duty. R.R.O. 1980, Reg. 790, s. 7.

8. No member of a police force shall draw a revolver except if the member believes, on reasonable and probable grounds, that to do so is necessary,

- (a) for the protection of the life of a person; or
- (b) for the apprehension or detention of a person who may cause death or grievous bodily harm to another person. O. Reg. 173/88, s. 1.

9.—(1) No member of a police force shall discharge a firearm in the performance of duty except if the member believes, on reasonable and probable grounds, that to do so is necessary,

- (a) for the defence of the life of a person;
- (b) for the apprehension, when other means are insufficient, of a person who may cause death or grievous bodily harm to another person;
- (c) to destroy an animal that is potentially dangerous or so badly injured that humanity dictates that its suffering be ended; or
- (d) to give an alarm or call for assistance in a critical situation where there is no reasonable alternative. O. Reg. 173/88, s. 2.

(2) Sections 3 to 8 and subsection (1) do not apply to a member of a police force when engaged in target practice or ordinary weapon maintenance in accordance with the regulations of the police force. R.R.O. 1980, Reg. 790, s. 9 (2).

9a.—(1) Unless otherwise directed by the board or committee of council, as the case may be, the chief of police or a superior officer, a member of a police force who is accompanying and supervising an auxiliary member of the police force may issue a firearm to the auxiliary member if the member believes, on reasonable and probable grounds, that they are entering into a situation in which it is necessary that the auxiliary member be armed,

- (a) for the defence of the life of a person; or
- (b) to assist in the apprehension, when other means are insufficient, of a person who may cause death or grievous bodily harm to another person.

(2) Sections 4 to 9, 10 and 11 apply to every auxiliary member to whom a firearm is issued under subsection (1). O. Reg. 173/88, s. 3.

10. Where a member of a police force, other than the Commissioner or chief of police, unintentionally or intentionally, except on a target range or in the course

of ordinary weapon maintenance, discharges his firearm, the Commissioner or chief of police, as the case may be, shall immediately cause an investigation to be made into the circumstances. R.R.O. 1980, Reg. 790, s. 10.

11.—(1) Where a member of a police force, other than the Commissioner or chief of police, by the discharge of a firearm in the performance of his duty, kills or injures another person, the Commissioner or chief of police, as the case may be, shall immediately cause an investigation to be made into the circumstances.

(2) The Commissioner shall submit a report of any investigation made by him under subsection (1) to the Commission and the chief of police shall submit a report on any investigation made by him to the board or, where there is no board, with the committee of council.

(3) The Commission or the board or committee of council, on receiving a report of the Commissioner or the chief of police, as the case may be, under subsection (2) shall, as soon as practicable, review the report and make such further inquiries as it considers necessary or expedient.

(4) The board or committee of council shall file with the Commission any report submitted to it by the chief of police under subsection (2), together with a report of any additional inquiries undertaken.

(5) Where the Commissioner discharges his firearm in the performance of his duty, he shall forthwith report the matter to the Commission, who shall inquire into the circumstances.

(6) Where a chief of police discharges his firearm in the performance of his duty, he shall forthwith report the matter to the board or committee of council, as the case may be, and the board or committee shall inquire into the circumstances and file a report of such inquiry with the Commission.

(7) The Commission shall inform the Solicitor General of the contents of any report filed with it under subsection (2), (4), (5) or (6) and, on his request, submit to him a copy of such report for whatever action he considers necessary. R.R.O. 1980, Reg. 790, s. 11.

GAS AND CHEMICAL WEAPONS

12.—(1) Subject to subsection (2), no member of a police force shall use any gas or chemical weapon.

(2) The use of the substance commonly known as tear gas is permitted, provided it is not applied intentionally in concentrated form directly to the person. R.R.O. 1980, Reg. 790, s. 12.

MOTOR VEHICLES

13. No member of a police force shall use a subcompact motor vehicle for the purpose of general police patrol. O. Reg. 336/81, s. 1.

APPENDIX C

Proposed Amendments to Regulation 790

REGULATION TO AMEND
REGULATION 790 OF REVISED REGULATIONS OF ONTARIO, 1980
MADE UNDER THE
POLICE SERVICES ACT

1. The title to Regulation 790 of Revised Regulations of Ontario, 1980 is revoked and the following substituted:

EQUIPMENT AND USE OF FORCE

2. Section 2 of the Regulation is revoked and the following substituted:

2. In this Regulation,

"board" means a municipal police services board;

"firearm" means a firearm as defined in section 84 of the Criminal Code (Canada);

"handgun" means a revolver or pistol that may be carried under section 3.

3. Section 4 of the Regulation is revoked and the following substituted:

4. Before a firearm is issued to a member of a police force, the Commissioner or chief of police, as the case may be, shall satisfy himself or herself that the member has successfully completed the training required by section 12.2 and is competent in the use of the firearm.

4. Sections 6 and 7 of the Regulation are revoked.

5. Section 8 of the Regulation, as remade by section 1 of Ontario Regulation 173/88, is revoked and the following substituted:

8. A member of a police force shall not draw a handgun or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.

8.1 Sections 3 to 8 do not apply to a member of a police force when engaged in a training exercise, target practice or ordinary weapon maintenance in accordance with the rules of the police force.

6. Section 9 of the Regulation, as amended by section 2 of Ontario Regulation 173/88, is revoked and the following substituted:

9. Despite section 8, a member of a police force may discharge a handgun or other firearm,

- (a) to call for assistance in a critical situation, if there is no reasonable alternative; or
- (b) to destroy an animal that is potentially dangerous or is so badly injured that humanity dictates that its suffering be ended.

7. Section 9a of the Regulation, as made by section 3 of Ontario Regulation 173/88, is revoked and the following substituted:

9.1-(1) Unless otherwise directed by the board, the chief of police or a superior officer, a member of a police force who is accompanying and supervising an auxiliary member of the police force may issue a firearm to the auxiliary member if he or she believes, on reasonable grounds, that they are entering into a situation in which it is necessary that the auxiliary member be armed to protect against loss of life or serious bodily harm.

(2) Sections 4 to 9, sections 10 and 11 and sections 12.2 to 12.5 apply to an auxiliary member to whom a firearm is issued under subsection (1).

8. Subsections 11(2) to (7) of the Regulation are revoked and the following substituted:

(2) A report on the investigation shall be submitted,

- (a) to the Solicitor General, in the case of an investigation by the Commissioner; or
- (b) to the board, in the case of an investigation by the chief of police.

(3) The Solicitor General or the board shall, as soon as practicable, review the report and make such further inquiries as the Solicitor General or the board considers appropriate.

(4) The board shall file with the Solicitor General a copy of any report submitted to it under subsection (2), together with a report on any additional inquiries made by the board.

(5) If the Commissioner discharges a firearm in the performance of his or her duty, the Commissioner shall promptly report the matter to the Solicitor General and the Solicitor General shall cause an investigation to be made into the circumstances.

(6) If a chief of police discharges a firearm in the performance of his or her duty, the chief of police shall promptly report the matter to the board and the board shall cause an investigation to be made into the circumstances and shall file a report on the investigation with the Solicitor General.

9. Section 12 of the Regulation and the heading preceding it are revoked and the following substituted:

OTHER WEAPONS

12.-(1) A member of a police force shall not use a weapon other than a firearm on another person unless,

- (a) that type of weapon has been approved for use by the Solicitor General;
- (b) the weapon conforms to technical standards established by the Solicitor General; and
- (c) the weapon is used in accordance with standards established by the Solicitor General.

(2) Subsection (1) does not apply to the use of a weapon on another member of the police force in the course of a training exercise in accordance with the rules of the police force.

(3) This section comes into force on the 1st day of March, 1993.

12.1-(1) Subject to subsection (2), a member of a police force shall not use any gas, chemical or aerosol weapon.

(2) Subject to section 12,

- (a) the use of the substance commonly known as tear gas is permitted if it is not applied intentionally in concentrated form directly to the person; and
- (b) the use of an aerosol weapon is permitted if the active ingredient is not a gas or chemical.

TRAINING IN THE USE OF FORCE

12.2-(1) A member of a police force shall not use force on another person unless the member has successfully completed a training course on the use of force.

(2) A member of a police force shall not carry a firearm unless, during the twelve previous months, the member has successfully completed a training course on the use of firearms.

12.3-(1) Every police force shall ensure that, at least once every twelve months,

- (a) every member of the police force who may be required to use force on other persons receives a training course on the use of force;
- (b) every member of the police force who is authorized to carry a firearm receives a training course on the use of firearms. *

(2) The police force shall maintain written records of the training courses taken by members of the police force on the use of force and the use of firearms.

(3) This section comes into force on the 1st day of June, 1994.

12.4 The training courses referred to in sections 12.2 and 12.3 shall include training on the following matters:

1. Legal requirements.
2. The exercise of judgment.
3. Safety.
4. Theories relating to the use of force.
5. Practical proficiency.

REPORTS ON THE USE OF FORCE

12.5-(1) A member of a police force shall submit a report to the chief of police or Commissioner whenever the member,

- (a) draws a handgun in the presence of a member of the public, excluding a member of the police force while on duty, or discharges a firearm;
- (b) uses a weapon other than a firearm on another person; or

(c) uses physical force on another person that results in an injury requiring medical attention.

(2) The report shall set out the facts surrounding the occurrence in respect of which the report is required.

(3) Subsection (1) does not apply when,

(a) a handgun is drawn or a firearm is discharged in the course of a training exercise, target practice or ordinary firearm maintenance in accordance with the rules of the police force;

(b) a weapon other than a firearm is used on another member of a police force in the course of a training exercise in accordance with the rules of the police force; or

(c) physical force is used on another member of a police force in the course of a training exercise in accordance with the rules of the police force.

(4) The Solicitor General may require a chief of police or the Commissioner to deliver or make available to the Solicitor General a copy of a report submitted under subsection (1).

(5) Every police force shall review on a regular basis its policies on the use of force and on the training courses provided under section 12.3, having regard to the reports submitted under subsection (1).

(6) This section comes into force on the 1st day of January, 1993.

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